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In re application of: **Dutta et al.**	§	Group Art Unit: **2152** **JAN 1 7 2006**
	§	
Serial No.: **09/838,368**	§	Examiner: **Refai, Ramsey**
	§	
Filed: **April 19, 2001**	§	Attorney Docket No.: **AUS920010016US1**
	§	
For: **Automatic Backup of Wireless Mobile Device Data Onto Gateway Server While Device is Idle**	§	

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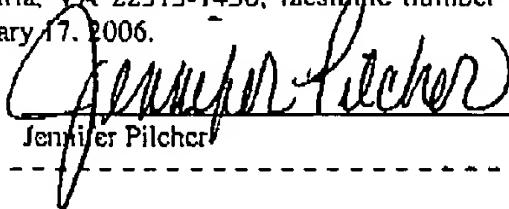
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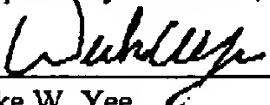
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- Transmittal Document; and
- Appeal Brief.

Re: Application No. **09/838,368**

Attorney Docket No: **AUS920010016US1**

Date: Tuesday, January 17, 2006

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Docket No. AUS920010016US1 *PATENT*

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: **Dutta et al.** §
§
§ Group Art Unit: **2152**
Serial No. **09/838,368** §
§ Examiner: **Refai, Ramsey**
Filed: **April 19, 2001** §
§
For: **Automatic Backup of Wireless** §
Mobile Device Data Onto Gateway §
Server While Device is Idle

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By: _Jennifer Pilcher_
Jennifer Pilcher

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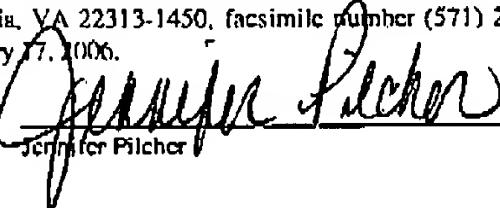
APPEAL BRIEF (37 C.F.R. 41.37)

This brief is in furtherance of the Notice of Appeal, filed in this case on November 21, 2005.

The fees required under § 41.20(B)(2), and any required petition for extension of time for filing this brief and fees therefore, are dealt with in the accompanying TRANSMITTAL OF APPEAL BRIEF.

REAL PARTY IN INTEREST

The real party in interest in this appeal is the following party: International Business Machines Corporation of Armonk, N.Y.

RELATED APPEALS AND INTERFERENCES

With respect to other appeals or interferences that will directly affect, or be directly affected by, or have a bearing on the Board's decision in the pending appeal, there are no such appeals or interferences.

STATUS OF CLAIMS

A. TOTAL NUMBER OF CLAIMS IN APPLICATION

Claims in the application are: 1-39

B. STATUS OF ALL THE CLAIMS IN APPLICATION

1. Claims canceled: 5 and 22
2. Claims withdrawn from consideration but not canceled: 1-4, 8, 9, 11, 15-21, 24, 26-31, 33-35 and 39
3. Claims pending: 1-4, 6-21 and 23-39
4. Claims allowed: none
5. Claims rejected: 1-4, 6-21 and 23-39
6. Claims objected to: none

C. CLAIMS ON APPEAL

The claims on appeal are: 6, 7, 10, 12-14, 23, 25, 32 and 36-38

STATUS OF AMENDMENTS

No amendment after final was filed for this case.

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PAGE 7/28 * RCVD AT 1/17/2006 10:51:44 AM [Eastern Standard Time] * SVR:USPTO-EFXRF-6/26 * DNIS:2738300 * CSID:9723857766 * DURATION (mm-ss):05-50

SUMMARY OF CLAIMED SUBJECT MATTER

A.   CLAIM 6

Claim 6 is directed to a method for backing up data. A connection is established at a server with a wireless device over a wireless network using a wireless protocol. A request is pushed over the wireless network to the wireless device to backup data, where the step of pushing the request comprises sending a textual based service load to a proxy server, where the proxy server is configured to translate the textual based service load to a binary based service load and send the translated binary based service load to the wireless device. The data is received from the wireless device, and stored on a storage device coupled to the wireless network. The service load provides a uniform resource identifier for an application that the wireless device may retrieve to transmit the data to the server (Specification page 15, line 15 – page 17, line 23; page 19, line 26 – page 20, line 15; Figure 5, all blocks; Figure 7, all blocks).

B.   CLAIM 10

Claim 10 is directed to a method on a proxy server for facilitating data backup. A request is received from a backup server in a first protocol, for a wireless client to backup data to the backup server. The request formatted in the first protocol is translated into a translated request formatted in a second protocol, where the second protocol is compatible with the wireless client. The translated request is sent to the wireless client over a wireless network. The data from the wireless client and formatted in a third protocol is received over the wireless network. The data formatted in the third protocol is translated into translated data formatted in a fourth protocol compatible with the backup server. This translated data is sent to the backup server. The request is a textual based service load providing the client with a uniform resource identifier for an application which will identify, locate, and transmit the requested data to the backup server (Specification page 15, line 15 – page 17, line 23; page 19, line 26 – page 20, line 15; Figure 5, all blocks; Figure 7, all blocks).

C.   CLAIM 14

Claim 14 is directed to a method for backing up data. Responsive to receipt of a command from a backup server via a wireless network to backup data, the data to be backed up is retrieved from storage within a wireless client. The data to be backed up is transmitted to the backup server via the wireless network utilizing a wireless protocol. The command from the backup server includes a location of an application to be executed by the wireless client to transmit the data to be backed up to the backup server (Specification page 15, line 15 – page 17, line 23; page 19, line 26 – page 20, line 15; Figure 5, all blocks; Figure 7, all blocks).

D.   CLAIM 23

Claim 23 is a program product claim corresponding to method Claim 6.

E.   CLAIM 25

Claim 25 is a program product claim corresponding to method Claim 14, and the summary of Claim 14 is applicable for Claim 25, and thus is hereby incorporated by reference.

F.   CLAIM 36

Claim 36 is a system claim corresponding to method Claim 14, and the summary of Claim 14 is applicable for Claim 36, and thus is hereby incorporated by reference.

GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

A. GROUND OF REJECTION 1 (Claim 17)

Claim 17 stands rejected under 35 U.S.C. § 112, second paragraph as being indefinite.

B. GROUND OF REJECTION 2 (Claims 1-4, 6-8, 14-17, 25, 27-30 and 36-39)

Claims 1-4, 6-8, 14-17, 25, 27-30 and 36-39 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Lazaridis et al. (U.S. Patent No. 6,401,113).

C. GROUND OF REJECTION 3 (Claims 9-13, 18-21, 23, 24, 26 and 31-35)

Claims 9-13, 18-21, 23, 24, 26 and 31-35 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Lazaridis et al. (U.S. Patent No. 6,401,113) in view of Zarom (U.S. Patent No. 6,356,529).

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PAGE 10/28 * RCVD AT 1/17/2006 10:51:44 AM [Eastern Standard Time] * SVR:USPTO-EFXRF-6/26 * DNIS:2738300 * CSID:9723857766 * DURATION (mm-ss):05-50

ARGUMENT

A. GROUND OF REJECTION 1 (Claim 17)

A.1. Claim 17

Appellants are withdrawing Claim 17 from consideration in the present application.

B. GROUND OF REJECTION 2 (Claims 1-4, 6-8, 14-17, 25, 27-30 and 36-39)

B.1. Claims 1-4, 8, 17, 27-30 and 39

Appellants are withdrawing Claims 1-4, 8, 17, 27-30 and 39 from consideration in the present application.

B.2. Claim 6

With respect to Claim 6, Appellants urge that the cited reference does not teach the claimed feature of wherein the service load provides a uniform resource *identifier for an application that the wireless device may retrieve* to transmit the data to the server. In rejecting Claim 6, the Examiner states that Lazaridis teaches a service load that provides a uniform resource identifier for an application that the wireless may retrieve to transmit the data (being backed-up) to the server at column 4, lines 40-45. Appellants show that there, Lazaridis states (the entire paragraph is being reproduced herein to provide the proper context for the cited passage):

> "In an alternative system and method, the redirector program executes on a
> network server, and the server is programmed to detect numerous redirection
> event triggers over the network from multiple user desktop computers coupled to
> the server via a LAN. The server can receive internal event triggers from each of
> the user desktops via the network, and can also receive external event triggers,
> such as messages from the users' mobile data communication devices. In response
> to receiving one of these triggers, the server redirects the user's data items to the
> proper mobile data communication device. The user data items and addressing
> information for a particular mobile device can be stored at the server or at the

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user's PC. Using this alternative configuration, one redirector program can serve a plurality of users. This alternative configuration could also include an internet- or intranet-based redirector program that could be accessible through a secure webpage or other user interface. The redirector program could be located on an Internet Service Provider's system and accessible only through the Internet."

As can be seen, this cited passage is with respect to an alternative system that includes a global redirector program located on a server that can support multiple user desktops and their corresponding wireless devices. As to the passage specifically recited by the Examiner in rejecting Claim 6, Lazaridis states that this server could be located on an Internet Service Provider's system and accessible only through the Internet (as shown at Lazaridis Figure 2, elements 11 and 12). In contrast, Claim 6 of the present application specifically recites that the service load (which is the subject of a translation by a proxy server, and such proxy server is alleged by the Examiner to be equivalent to Lazaridis' wireless gateway 20 of Figure 2) provides a uniform resource identifier for an application that the wireless device may retrieve to transmit the data to the server. Restated, the service load that is *translated by the proxy server* per Claim 6 provides a uniform resource locator for an application that the wireless device may retrieve to transmit the data to the server. Lazaridis' wireless gateway (which is alleged to be the claimed proxy server) does not translate any type of service load that provides a uniform resource identifier for an application that the wireless device may retrieve to transmit the data to the server. At best, Lazaridis' wireless gateway (alleged to be the claimed proxy server which performs translation of a service load) takes a received message that has previously been wrapped in an outer envelope and sends such message to the wireless device using addressing information added as a part of the outer envelope (column 8, lines 44-55). This enveloped message does not contain any type of uniform resource identifier for an application that the wireless device may retrieve to transmit the data to the server, as expressly recited in Claim 6. Thus, it is shown that Claim 6 has been erroneously rejected, as every element of the claimed invention is not identically shown in a single reference[1].

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[1] For a prior art reference to anticipate in terms of 35 U.S.C. 102, every element of the claimed invention must be identically shown in a single reference. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).

B.3.   Claim 7

Appellants initially show error in the rejection of Claim 7 for reasons given above with respect to Claim 6 (of which Claim 7 depends upon).

Further with respect to Claim 7, Appellants urge that the cited reference does not teach any type of *application retrieval by the wireless device, for execution of such application by the wireless device.* The features of Claim 7 are particularly useful for a wireless device having limited resources for performing a data backup operation, as described at Specification page 17, line 24 – page 18, line 3. In contrast, and to the extent Lazaridis may suggest an ability to transfer data from the wireless device to a host, a redirector program *is resident in the remote device* (column 4, lines 46-56; column 6, lines 56-62), and thus this redirector program is not requested for and received by a wireless device, as claimed. Thus, Claim 7 is further shown to not be anticipated by the cited reference as there are additional claimed features not identically shown in a single reference, and therefore Claim 7 has been erroneously rejected under 35 U.S.C. § 102(e).

B.4.   Claims 14-16, 25 and 36-38

With respect to Claim 14, such claim recites a method for backing up data. The method comprises steps of (1) responsive to receipt of a command from a backup server via a wireless network to backup data, retrieving, without user intervention, the data to be backed up from storage within a wireless client; and (2) transmitting, without user intervention, the data to be backed up to the backup server via the wireless network utilizing a wireless protocol. *The command from the backup server to backup data comprises a location of an application to be executed by the wireless client to transmit the data to be backed up to the backup server.* The cited reference teaches a resident redirector program located on the wireless device, and thus does not teach or otherwise suggests the features of Claim 14, for similar reasons to those described above with respect to Claim 6. Thus, Claim 14 is shown to not be anticipated by the cited reference as there are additional claimed features not identically shown in a single reference, and therefore Claim 14 has been erroneously rejected under 35 U.S.C. § 102(e).

C. GROUND OF REJECTION 3 (Claims 9-13, 18-21, 23, 24, 26 and 31-35)

C.1. Claims 9, 11, 18-21, 24, 26, 31 and 33-35

Appellants are withdrawing Claims 9, 11, 18-21, 24, 26, 31 and 33-35 from consideration in the present application.

C.2. Claims 10, 12, 13 and 32

With respect to Claim 10, such claim recites "wherein the request is a textual based service load providing the client with a uniform resource identifier for an application which will identify, locate, and transmit the requested data to the backup server". As can be seen, a uniform resource identifier is provided to the client for an application which will (i) identify, (ii) locate, and (iii) transmit the requested data to the backup server. This identifier is provided to the client by way of a request that is received from the backup server. In rejecting Claim 10, the Examiner cites Lazaridis' teaching at col. 4, lines 40-45 and col. 6, lines 9-17 as teaching this claimed feature. Applicants urge that the passage cited at col. 4 describes that the redirector program – which is the primary purpose of Lazaridis invention and provides secure, transparent delivery of user-selected data items from the host system to the mobile device (col. 2, line 47 – col. 3, line 3) – could be accessible through a secure webpage or other user interface, such that the redirector program could be located on an Internet Service Provider's system. *Such passage does not teach or otherwise suggest that the actual request to backup data that is received from a backup server provides any type of application identifier for such redirector program.* As to the passage cited at col. 6, such passage describes a gateway that forms a connection or bridge between a wide-area-network and some other type of network. This passage does not describe any type of request to backup data, and thus this passage does not describe details of such (missing) backup request, such as the request (to backup data) itself provides an identifier for an application which will (i) identify, (ii) locate, and (iii) transmit the requested data to the backup server, as claimed. As these are the sole passages that are cited as teaching the features of Claim 10, it is urged that the Examiner has failed to properly establish a prima facie showing of obviousness with respect to Claim 10[2]. Accordingly, the burden has not shifted to Appellants to rebut such improper obviousness assertion[3]. In addition, as a proper prima facie showing of obviousness has not been established, Claim 10 has been erroneously rejected[4].

---

[2] In rejecting claims under 35 U.S.C. Section 103, the examiner bears the initial burden of presenting a prima facie case of obviousness. *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). To establish prima facie obviousness of a claimed invention, all of the claim limitations must be taught or suggested by the prior art. MPEP 2143.03. *See also, In re Royka*, 490 F.2d 580 (C.C.P.A. 1974).

[3] Only if that burden is met, does the burden of coming forward with evidence or argument shift to the applicant. *In re Oetiker, supra.*

[4] If the examiner fails to establish a prima facie case, the rejection is improper and will be overturned. *In re Fine*, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988).

C.3.   Claim 23

Appellants show error in the rejection of Claim 23 for similar reasons to those given above with respect to Claim 6, and urge that none of the cited references teach or suggest the claimed feature of "wherein the service load provides a uniform resource identifier for an application that the wireless device may retrieve to transmit the data to the server". Thus, Claim 23 is shown to not be obvious in view of the cited references as there are claimed features not taught or suggested by the cited references. Therefore, Claim 14 has been erroneously rejected under 35 U.S.C. § 103(a).

In conclusion, Appellants have shown numerous errors in the final rejection of Claims 6, 7, 10, 12-14, 23, 25, 32 and 36-38, and thus requests that the Board reverse the rejection of such claims.
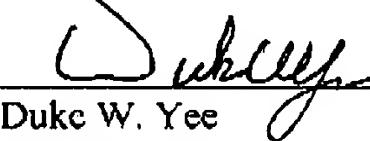
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CLAIMS APPENDIX

The text of the claims involved in the appeal reads:

1.   A method for backing up data, the method comprising:

establishing at a server a connection with a wireless device over a wireless network using

a wireless protocol;

pushing, over the wireless network to the wireless device, a request to backup data,

wherein the step of pushing the request comprises sending a textual based service load to a proxy

server, wherein the proxy server is configured to translate the textual based service load to a

binary based service load and send the translated binary based service load to the wireless device;

receiving the data from the wireless device; and

storing the data on a storage device coupled to the wireless network.

2.   The method as recited in claim 1, wherein the connection is established in response to

receipt of an indication that the wireless device has been powered on.

3.   The method as recited in claim 1, wherein connection is established periodically.

4.   The method as recited in claim 1, wherein the connection is established in response to

receipt of a request to backup data from the wireless device.

6. The method as recited in claim 1, wherein the service load provides a uniform resource identifier for an application that the wireless device may retrieve to transmit the data to the server.

7. The method as recited in claim 6, further comprising steps of:

sending a request by the wireless device to the proxy server to retrieve the application identified by the uniform resource identifier;

receiving the application by the wireless device; and

executing the application by the wireless device to transfer the data requested to be backed up.

8. The method as recited in claim 1, wherein the connection between the server and the wireless device uses unused extra bandwidth.

9. A method on a proxy server for facilitating data backup, the method comprising:

receiving a request in a first protocol from a backup server for a wireless client to backup data to the backup server;

translating the request formatted in the first protocol into a translated request formatted in a second protocol, wherein the second protocol is compatible with the wireless client;

sending the translated request to the wireless client over a wireless network;

receiving over the wireless network the data from the wireless client formatted in a third protocol;

translating the data formatted in the third protocol into translated data formatted in a

fourth protocol compatible with the backup server; and

sending the translated data to the backup server.

10.   The method as recited in claim 9, wherein the request is a textual based service load

providing the client with a uniform resource identifier for an application which will identify,

locate, and transmit the requested data to the backup server.

11.   The method as recited in claim 9, wherein the translated request is a binary based service

load.

12.   The method as recited in claim 10, wherein the third protocol is a wireless application

protocol.

13.   The method as recited in claim 10, wherein the fourth protocol is a hypertext transfer

protocol.

14.   A method for backing up data, the method comprising:

responsive to receipt of a command from a backup server via a wireless network to

backup data, retrieving, without user intervention, the data to be backed up from storage within a

wireless client; and

transmitting, without user intervention, the data to be backed up to the backup server via

the wireless network utilizing a wireless protocol, wherein the command from the backup server

comprises a location of an application to be executed by the wireless client to transmit the data to be backed up to the backup server.

15.   The method as recited in claim 14, wherein the data to be backed up is sent to the server by way of a proxy server and is sent using a wireless application protocol.

16.   The method as recited in claim 14, further comprising:

transmitting a request to the backup server via the wireless network to retrieve backed up data;

receiving the backed up data from the backup server via the wireless network; and

storing the backed up data on the wireless client.

17.   A method for backing up data, the method comprising:

establishing at a server a connection with a wireless device over a wireless network using a wireless protocol;

pushing, over the wireless network to the wireless device, a request to backup data;

receiving the data from the wireless device;

storing the data on a storage device coupled to the wireless network, wherein the data stored on the storage device is backed up data;

receiving a request for the backed up data from the wireless client;

retrieving the backed up data; and

transmitting the backed up data to the wireless client via the wireless network.

18.   A computer program product in a computer readable media for use in a data processing

system implemented as a server for backing up data, the computer program product comprising:

first instructions for establishing a connection with a wireless device over a wireless

network using a wireless protocol;

second instructions for enabling a request to backup data to be pushed over the wireless

network to the wireless device, wherein the request comprises a textual based service load and is

sent to a proxy server, wherein the proxy server is configured to translate the textual based

service load to a binary based service load and send the translated binary based service load to

the wireless device;

third instructions for receiving the data from the wireless device; and

fourth instructions for storing the data on a storage device connected to the wireless

network.

19.   The computer program product as recited in claim 18, wherein the connection is

established in response to receipt of an indication that the wireless device has been powered on.

20.   The computer program product as recited in claim 18, wherein the first instructions

comprise instructions for establishing the connection periodically.

21.   The computer program product as recited in claim 18, wherein the connection is

established in response to a request to backup data received from the wireless device.

23.   The computer program product as recited in claim 18, wherein the service load provides a uniform resource identifier for an application that the wireless device may retrieve to transmit the data to the server.

24.   A computer program product in a computer readable media for use in a data processing system implemented as a proxy server for facilitating data backup, the computer program product comprising:

first instructions for enabling receipt of a request, formatted in a first protocol, from the backup server for a wireless client to backup data to the backup server via a wireless network;

second instructions for translating the request formatted in the first protocol into a translated request formatted in a second protocol, wherein the second protocol is compatible with the wireless client;

third instructions for enabling the transmission of the translated request to the wireless client;

fourth instructions for enabling the receipt of the data from the wireless client formatted in a third protocol;

fifth instructions for translating the data formatted in the third protocol into translated data formatted in a fourth protocol compatible with the backup server; and

sixth instructions for enabling the transmission of the translated data to the backup server.

25.   A computer program product in a computer readable media for use in a data processing system implemented as a wireless client for backing up data, the computer program product comprising:

first instructions, responsive to receipt of a command from a backup server via a wireless network to backup data, for retrieving, without user intervention, the data to be backed up from storage within a wireless client; and

second instructions for enabling the transmission of the data, without user intervention, to be backed up to the server via the wireless network utilizing a wireless protocol, wherein the command from the backup server comprises a location of an application to be executed by the wireless client to transmit the data to be backed up to the backup server.

26.   The computer program product as recited in claim 18, wherein the data stored on the storage device is backed up data, and further comprising:

fifth instructions for enabling the receipt of a request for the backed up data from the wireless client;

sixth instructions for retrieving the backed up data; and

seventh instructions for enabling the transmission of the backed up data to the wireless client via the wireless network.

27.   A system for backing up data, the system comprising:

a communication unit which establishes a connection with a wireless device over a wireless network;

a backup initiator which pushes, over the wireless network to the wireless device, a request to backup data, wherein the request comprises a textual based service load that is sent to a proxy server, wherein the proxy server is configured to translate the textual based service load

to a binary based service load and send the translated binary based service load to the wireless device;

a receiver which receives the data from the wireless device; and

storing unit which stores the data on a storage device coupled to the wireless network.

28. The system as recited in claim 27, wherein the connection is established in response to receipt of an indication that the wireless device has been powered on.

29. The system as recited in claim 27, wherein the connection is established periodically.

30. The system as recited in claim 27, wherein the connection is established in response to a request to backup data received from the wireless device.

31. A system for facilitating data backup, the system comprising:

a request receiver which receives a request in a first protocol from a backup server requesting that a wireless client backup data to the backup server;

a first translator which translates the request formatted in the first protocol into a translated request formatted in a second protocol, wherein the second protocol is compatible with the wireless client;

a first transmitter which sends the translated request to the wireless client via a wireless network;

a data receiver which receives the data from the wireless client via the wireless network formatted in a third protocol;

a second translator which translates the data formatted in the third protocol into translated

data formatted in a fourth protocol compatible with the backup server; and

a second transmitter which sends the translated data to the backup server.

32. The system as recited in claim 31, wherein the request is a textual based service load

providing the client with a uniform resource identifier for an application which will identify,

locate, and transmit the requested data to the backup server.

33. The system as recited in claim 31, wherein the translated request is a binary based service

load.

34. The system as recited in claim 31, wherein the third protocol is a wireless application

protocol.

35. The system as recited in claim 31, wherein the fourth protocol is a hypertext transfer

protocol.

36. A system for backing up data to a server via a network, the system comprising:

a data retriever which, responsive to receipt of a command from a backup server via a

wireless network to backup data, retrieves, without user intervention, the data to be backed up

from storage within a client; and

a transmitter which transmits, without user intervention, the data to be backed up to the

backup server via the wireless network utilizing a wireless protocol, wherein the command from

the backup server comprises a location of an application to be executed by the wireless client to transmit the data to be backed up to the backup server.

37. The system as recited in claim 36, wherein the wireless device is a wireless phone.

38. The system as recited in claim 36, wherein the wireless device is a personal digital assistant.

39. The system as recited in claim 27, wherein the data stored on the storage device is backed up data, and wherein the receiver receives a request for the backed up data from the wireless client, and further comprising:

a retrieval unit which retrieves the backed up data; and

a transmitter which transmits the backed up data to the wireless client.

EVIDENCE APPENDIX

There is no evidence to be presented.

RELATED PROCEEDINGS APPENDIX

There are no related proceedings.